In the High Court of Uttaranchal, at Nainital.

A.O. No. 1266/2001

(Old No. 995/1989)

The New India Assurance Company Ltd.
Divisional Office, Nagar Tikonia, Haldwani,
District Nainital .....Appellant.

Vs.

1. Lal Behari S/o Toofani
2. Smt. Bechani W/o Lal Behari
   R/o Village Khaleria, P.O.Khalimahuwat
   District Nainital.
3- Bunda Khan S/o Zaheer Khan,
   R/o Kichha Bus Stand, Kichha,
   District Nainital ...Respondents.

Hon'ble B.C. Kandpal, J:

This appeal has been preferred against the judgment and award dated 10-7-1989 passed by M.A.C.T./III Addl. District Judge, Nainital in MACP No. 46/1987, Lal Behari and another versus Bunda Khan and another.

2- Brief facts of the case are that on 8-11-1986 at about 4.15 P.M. the deceased Ram Prakash was going to Melaghat from Khaleria riding on his cycle and when he reached near the field of Jagir Singh, bus bearing registration No. USE 6078 driven by its driver Balwant Singh very rashly, negligently and in a careless manner, dashed the cycle of the deceased, who was on his extreme left side, resulting in the grievous injuries to the deceased and in his instantaneous death. The deceased at the time of accident was a student and after completing his studies he would have earned Rs. 2000/- per month and would have helped his parents in their old age. The claimants claimed Rs. 9,00,000/- as compensation.

3- The respondent Bunda Khan, owner of the offending bus, filed his written statement before the

Tribunal, denying the allegations of the claimants and alleged that the deceased himself was pulling his cycle in a high speed and came in contact with the bus with his own negligence. It was also alleged that the offending bus was insured with New India Assurance Company.

4- The respondent insurance company filed its W.S. before the Tribunal and admitted that the offending bus was insured with it. The insurer of the bus also alleged that its liability to indemnify the insured arises only when the insured has satisfied the Tribunal that the registration, permit, taxes and the driver having licence were all in order at the relevant time of the alleged accident and that too subject to a limit of Rs. 50,000/- in all.

5- On the pleadings of the parties, following issues were framed by the tribunal:-

1- Whether the accident was caused due to rash and negligent driving of the driver of the bus No. USE 6078?.
2- Whether the deceased himself contributed towards the accident?.
3- To what amount of compensation and from which party the claimants are entitled?.

6- The parties adduces the evidence in support of their cases. Thereafter the Tribunal awarded compensation to the tune of Rs. 69,000/- in favour of the claimants-respondents 1 and 2, along with an interest @ Rs. 10% per annum from the date of the petition till the date of payment, vide judgment and award dated 10-7-1989.

7. Feeling aggrieved by the aforesaid impugned judgment and award the insurer of the vehicle, i.e. the New India Assurance Company preferred the appeal before the Allahabad High Court, which has been transferred to this court after creation of new State.

8- After the receipt of the file of the case the notices were issued to the parties. The owner of the offending vehicle was served with the notice through publication and inspite of the substituted service the owner of the vehicle has neither appeared before this court nor has engaged any counsel on his behalf. However, I have heard Sri T.A. Khan, learned counsel for the appellant and Sri S.C. Bhatt, learned counsel for the claimants and perused the record.

9- The short point involved in this appeal is as to whether the insurance company with whom the offending vehicle in question was insured at the time of the accident, is liable to pay the entire amount of compensation or not.

10- Learned counsel for the appellant has submitted that at the time of the accident the liability of the insurance company was upto an extent of Rs. 50,000/- for third party liability. He has therefore stated that the insurance company in this case is liable to pay the compensation upto an extent of Rs. 50,000/- only.

11- My attention has been invited towads paper No. 26-C/5 which is the policy pertaining to the offending vehicle in question. The paper indicates that the limit of the amount of company's liability in respect of the accident for third party liability would be Rs. 50,000/-.

The accident in this case took place in the year 1986 and at that time to old Act was in force.

12- Having perused the documentary evidence available on the record, I am of the view that the insurance company in the instant case is liable to pay the amount of compensation up to an extent of Rs. 50,000/- along with an interest as has been indicated by the tribunal concerned. The owner of the vehicle is thus liable to pay the rest of the amount of compensation awarded by the tribunal along with an interest of Rs. 10% per annum from the date of filing of the petition till the date of payment.

14- I, therefore, modify the impugned judgment and award to the extent that the appellant, i.e. the New India Assurance Company is liable to pay a sum of Rs. 50,000/- as compensation to the claimants alongwith an interest of Rs. 10% per annum from the date of filing the petition till the date of actual payment. The rest of the amount as has been awarded by the Tribunal shall be paid to the claimants by the owner of the vehicle, i.e. the respondent No.3 Bunda Khan, along with the interest as has been indicated in the impugned judgment and award.

15- With the aforesaid observation the appeal is partly allowed. The impugned judgment and award dated 10-7-1989 passed by the M.A.C.T./III Addl. District Judge, Nainital in MACP No. 46/1987 is modified to the extent as indicated by me in the body of the judgment.

(B.C. Kandpal, J.)

Dated: 9-10-2006
ISB